

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

MARY BAYES and PHILIP BAYES,

Plaintiffs,

v.

BIOMET, INC., BIOMET ORTHOPEDICS,
LLC, BIOMET U.S. RECONSTRUCTION,
LLC, BIOMET MANUFACTURING, LLC
f/k/a BIOMET MANUFACTURING CORP.,

Defendants.

Case No. 4:13-cv-00800-SRC

DEFENDANTS' DESIGNATION OF EXPERT WITNESSES

Pursuant to the Court's August 6, 2019 Order [Dkt. No. 47] and Federal Rule of Civil Procedure 26(a)(2), Defendants Biomet, Inc., Biomet Orthopedics, LLC, Biomet U.S. Reconstruction, LLC, and Biomet Manufacturing, LLC f/k/a Biomet Manufacturing Corp. (collectively, "Defendants" or "Biomet") make the following case-specific designation of expert witnesses and explicitly reserve the right to amend or revise these case-specific designations in the event that such amendments or revisions are so warranted by ongoing fact and/or expert witness discovery in this case:

1. Steven M. Kurtz, Ph.D.
Corporate Vice President, Principal, and Practice Director
Exponent, Inc.
3440 Market Street, Suite 600
Philadelphia, PA 19104

Dr. Kurtz is a biomedical engineer with extensive experience with orthopedic medical devices. Dr. Kurtz evaluated the explanted acetabular components and

femoral heads. Dr. Kurtz will testify that, based on his experience, expertise, and evaluation of the retrieved components, there is no evidence in this case that the M2a Magnum components implanted in Ms. Bayes were defective in design or that Ms. Bayes' alleged injuries were caused by the devices themselves. Dr. Kurtz's qualifications, opinions, and bases for those opinions are summarized in his report and curriculum vitae, a true and correct copy of which will be produced with service of this designation. Dr. Kurtz is expected to testify consistent with his written report. In addition to the opinions expressed in his report, Dr. Kurtz is expected to offer testimony in response to opinions offered by plaintiff's witnesses (whether in reports, at deposition, or at trial) and any other evidence offered at trial that is within the scope of his training, knowledge, and expertise. A true and correct copy of Dr. Kurtz's report will be produced with service of this designation. His report includes (a) a list of all publications authored in the previous 10 years and (b) a list of all other cases which, during the previous 4 years, the witness testified as an expert at trial or by deposition. Dr. Kurtz reserves the right to supplement his report as additional information becomes available.

2. Thomas B. Fleeter, M.D.
1860 Town Center Drive, #300
Reston, VA 20190

Dr. Fleeter is a board-certified orthopedic surgeon subspecializing in operative and non-operative treatment of the hip and knee. Dr. Fleeter is expected to testify consistent with his written report prepared for this case and his common issue report prepared for Biomet MDL. Dr. Fleeter will testify about Ms. Bayes' orthopedic medical treatment and the revisions of her metal-on-metal implants. In addition to

the opinions expressed in his report, Dr. Fleeter is expected to offer testimony in response to opinions offered by plaintiff's witnesses (whether in reports, at deposition, or at trial) and any other evidence offered at trial that is within the scope of his training, knowledge, and expertise. Dr. Fleeter's qualifications, opinions, and bases for those opinions are summarized in his common issue and case-specific reports and curriculum vitae, being produced contemporaneously with this designation. His case-specific report includes (a) a list of all publications authored in the previous 10 years, (b) a list of all other cases which, during the previous 4 years, the witness testified as an expert at trial or by deposition and (c) his expert rate information. Dr. Fleeter reserves the right to supplement his report as additional information becomes available.

3. Thomas W. Bauer, M.D., Ph.D.
Pathologist-in-Chief
Department of Pathology and Laboratory Medicine
Hospital for Special Surgery
Main Campus – Main Hospital
535 E. 70th Street, 2nd Floor
New York, NY 10021

Dr. Bauer is a board-certified anatomic and clinical pathologist. Dr. Bauer's qualifications, opinions, and bases for those opinions are summarized in his report and curriculum vitae, being produced contemporaneously with this designation. Dr. Bauer is expected to testify consistent with his written report regarding his analysis of tissue samples taken during Ms. Bayes' revision surgeries. In addition to the opinions expressed in his report, Dr. Bauer is expected to offer testimony in response to opinions offered by plaintiff's witnesses (whether in reports, at deposition, or at trial) and any other evidence offered at trial that is within the scope of his training,

knowledge, and expertise. His case-specific report includes (a) a list of all publications authored in the previous 10 years, (b) a list of all other cases which, during the previous 4 years, the witness testified as an expert at trial or by deposition and (c) his expert rate information. Dr. Bauer reserves the right to supplement his report as additional information becomes available.

In addition, Defendants designate the generic expert reports of (a) Dr. Steven R. Schmid, (b) David Schroeder, (c) Dr. Daniel Schultz, (d) Dr. Andrew Spitzer, (e) Dr. Kenneth St. John, and (f) Dr. Thomas Fleeter, all of whom have been previously disclosed and deposed and whose reports have previously been served as part of the MDL proceedings. Plaintiff's counsel received copies of these reports as part of the MDL proceedings. Defendants will supply additional copies of those reports upon the request of Plaintiff.

NON-RETAINED EXPERT WITNESSES

Plaintiff's treating physicians may testify in an expert capacity, but have not been retained by, employed by, and are not subject to the control of the Defendants. Each of the medical records referenced have previously been produced by the Parties.

Defendants may call to testify at the time of trial and hereby designate any and all of the Plaintiff's treating physicians and other healthcare providers who may testify either live, by deposition, or through their records pertaining to the Plaintiff's physical condition prior to, during and subsequent to the dates of treatment at issue in this matter. The testimony which may be offered by each of these healthcare providers is contained or based upon the medical records, reports and evaluations associated with this case in addition to the medical history of the Plaintiff.

Defendants hereby incorporate by reference as though fully set forth the physicians and other healthcare providers listed in any and all of the medical records in this case, as well as the

medical records from any such healthcare provider. Defendants reserve the right to question any and all of said healthcare providers regarding any and all medical records, nursing records, radiographic studies or other information contained in the Plaintiff's medical records. Defendants also reserve the right to question these healthcare providers regarding the histories obtained from, physical examinations performed on, diagnoses of and assessments of the Plaintiff. Defendants also reserve the right to question these healthcare providers regarding care provided to Plaintiff in the past and/or future, test results, treatment plans, the reasonableness and necessity of the costs for past or future care, their communications with other healthcare providers and their opinions regarding the cause of any and all medical treatment and/or diagnosis, past or future.

Notwithstanding the above designations, Defendants reserve the right to object to any designation of Plaintiff's physicians and/or other healthcare providers as experts based on their qualifications, opinions, and other topics they may be called upon to provide expert testimony concerning.

Date: November 1, 2019

Respectfully submitted by:

/s/ M. Elizabeth Dyer Kellett

M. Elizabeth Dyer Kellett No. 64954

Troy A. Bozarth, No. 5209515

HEPLERBROOM LLC

211 N. Broadway, Suite 2700

St. Louis, MO 63102

314-241-6160

314-241-6116 Fax

edk@heplerbroom.com

tab@heplerbroom.com

Tom Joensen (*admitted pro hac vice*)

Stephanie Koltookian (*admitted pro hac vice*)

FAEGRE BAKER DANIELS LLP

801 Grand Avenue, 33rd Floor

Des Moines, Iowa 50309
Telephone: (515) 248-9000
Facsimile: (515) 248-9010
tom.joensen@faegrebd.com
stephanie.koltookian@faegrebd.com

Michelle Tessier (*admitted pro hac vice*)
FAEGRE BAKER DANIELS LLP
2200 Wells Fargo Center, 90 S. Seventh Street
Minneapolis, MN 55402
Telephone : (612) 766-7000
Facsimile : (612) 766-1600
michelle.tessier@faegrebd.com

Attorneys for Defendants

CERTIFICATE OF SERVICE

I certify that on November 1, 2019, the foregoing document was served on the following counsel of record:

James D. O'Leary
Michael J. Quillin
Michael S. Druse
O'Leary, Shelton, Corrigan, Peterson, Dalton & Quillin
The University Tower
1034 S. Brentwood Blvd., Penthouse 1-A
St. Louis, MO 63117
Email: oleary@osclaw.com
Email: quillin@osclaw.com

J. Kyle Bachus
John Christopher Elliott
Bachus & Schanker LLC
1899 Wynkoop Street, Ste. 700
Denver, CO 80202
Email: kyle.bachus@coloradolaw.net
Email: celliott@coloradolaw.net

/s/ M. Elizabeth Kellett